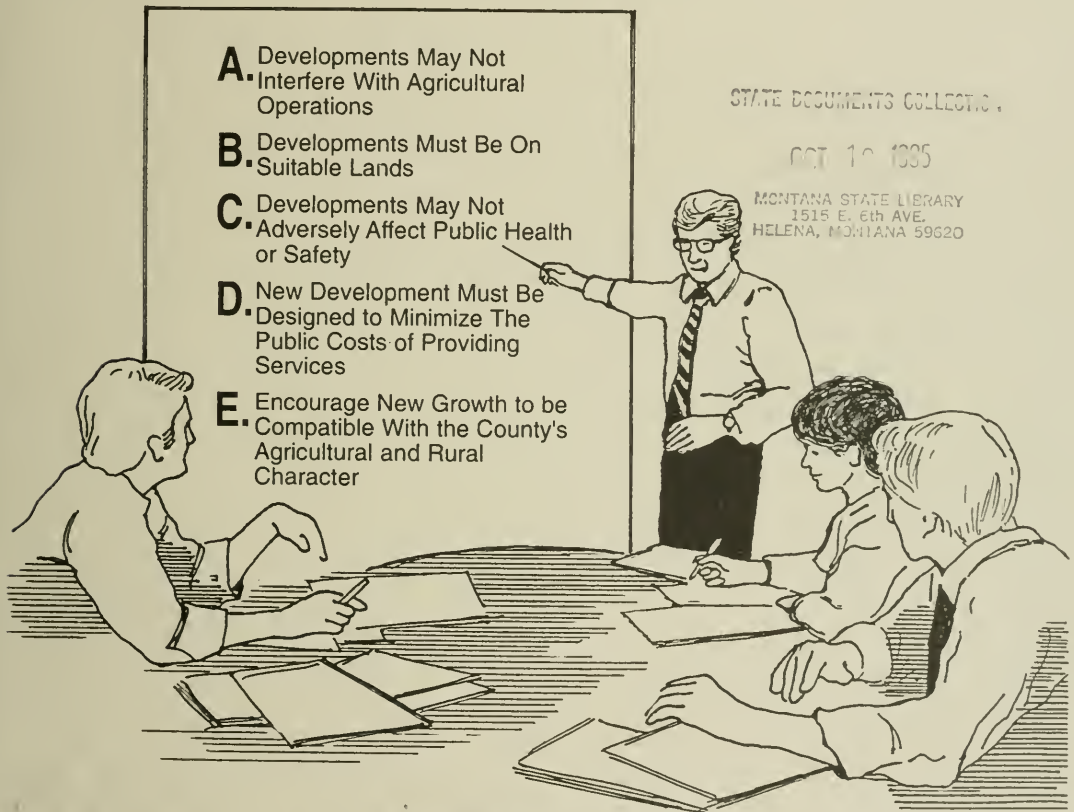


# MODEL COUNTY DEVELOPMENT PERMIT REGULATIONS

Prepared to Comply with the County Zoning Enabling Act



- A. Developments May Not Interfere With Agricultural Operations
- B. Developments Must Be On Suitable Lands
- C. Developments May Not Adversely Affect Public Health or Safety
- D. New Development Must Be Designed to Minimize The Public Costs of Providing Services
- E. Encourage New Growth to be Compatible With the County's Agricultural and Rural Character

STATE DOCUMENTS COLLECTION

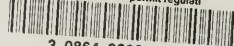
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*Community Technical Assistance Program*

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# *ADVISORY*

## ***MODEL COUNTY DEVELOPMENT PERMIT REGULATIONS***

Prepared to Comply with the  
Montana County Zoning Enabling Act

Jim E. Richard, Consultant  
White Sulphur Springs, MT

### **MONTANA DEPARTMENT OF COMMERCE Local Government Assistance Division Community Technical Assistance Program**

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**December, 1994**

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*Upon request, this publication will be made available in an alternative-accessible format.*



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## INTRODUCTION

These Model County Development Permit Regulations are intended to serve as an example and reference for counties to use in preparing or revising land use regulations. We encourage county governments to adapt the Model to match local concerns and needs. The Model is an advisory publication. It is part of an on-going program of technical assistance provided by the Department of Commerce (DOC) Community Technical Assistance Program (CTAP) to local government officials, planning boards, planning staff, development interests and citizens.

Development permit regulations are an alternative to traditional zoning as a means to regulate land use. One key element of traditional zoning is separating uses by dividing the jurisdiction into use districts (zones). In contrast to traditional zoning, which focuses on location of uses, development permit regulations usually focus primarily on the character or quality of new development, with less emphasis on regulating the location of development.

Development permit regulations often eliminate use districts and set out requirements that apply to new development throughout the jurisdiction. A new use may be permitted to locate in most locations, provided it meets the standards and requirements. Development permit regulations are particularly suitable for rural, unincorporated areas or small towns. These communities typically have low development densities, and in unincorporated areas land use patterns have not been established.

While the emphasis of development permit regulations typically is on the character and quality of development, the regulations can be drafted to regulate location of new uses, and to apply different requirements in different areas within a county. However, this Model, does not incorporate different districts, but sets forth development standards that apply to the entire county (or county planning and zoning district).

A county has tremendous flexibility to craft any type of land use regulations that will fit its needs. Montana law imposes few constraints on the content, substance and structure of county land use regulations. Federal courts have established a number of Constitutional and legal constraints on regulation of private land, but otherwise a county government has great latitude to develop useful and effective regulations that suit the community.

Local officials should not simply copy the provisions suggested in this Model into local development regulations. The planning board, governing body, planner or consultant, and interested citizens should analyze every provision in proposed land use regulations to assess its purpose, whether it is needed, clearly written, and the best wording to accomplish its purpose. Each provision of this Model should be carefully scrutinized by local officials. Unneeded provisions should be omitted, inappropriate or improper provisions modified to suit the community, and other appropriate provisions added.



This Model incorporates a board of adjustment to handle appellate functions (as required by statute), a Permit Board to approve conditional uses, and a Permit Officer to approve permitted uses. Local officials can incorporate any number of alternative review procedures into sound and effective development permit regulations. But, in particular, the development standards should be tailored to the individual county, and local officials should be willing to deviate from the suggested requirements of the Model and to adopt development standards that will work and be accepted in their particular county.

The Montana Supreme Court, in *Little v. Board of County Commissioners of Flathead County*, 38 St. Rpt. 1124, 631 P.2d. 1282 (Mont. 1981), emphatically reaffirmed the principle that land use regulations must substantially conform to the adopted comprehensive plan. **Prior to drafting and adopting development permit regulations, county officials must have prepared and adopted, through a public planning process, a comprehensive plan that expresses the objectives, policies and direction that will be implemented through the development permit regulations.**

Prior to proposing regulations, local officials need to thoroughly discuss with local citizens the development issues in their county and how the regulations are designed to address those issues. Broad public involvement and support is vital for the adoption of land use regulations. Public notice and hearings are required by law.

In many areas in Montana, suitable and affordable housing is in short supply. The CTAP has developed these Model County Development Permit Regulations with consideration for reducing unnecessary barriers to affordable housing, while safeguarding public health and safety in the development of housing. The suggested development standards in the Model are generally modest requirements designed to protect the public interest. As a matter of fact, only four pages of this Model set out development standards. In addition, these regulations offer flexibility that allows a developer the opportunity, through thoughtful planning and design, to provide lower-cost housing.

In addition to this Model, the CTAP has recently published a series of publications to assist local governing officials and staff and private citizens. These publications include:

- Montana's Annexation and Planning Statutes
- A Primer On Land Use Planning and Regulation for Local Governments
- A Handbook On Local Land Use Regulation
- A Model Municipal Zoning Ordinance

If you have any questions about this Model or other Department publications, please contact the Department of Commerce, Community Technical Assistance Program, 1424 Ninth Avenue, Helena, Montana 59620, phone (406) 444-3757.



RESOLUTION NO. \_\_\_\_\_

A RESOLUTION ADOPTING DEVELOPMENT REGULATIONS FOR PROMOTING THE HEALTH, SAFETY, AND GENERAL WELFARE OF \_\_\_\_\_ COUNTY, MONTANA, IN CONFORMANCE WITH AN ADOPTED COMPREHENSIVE PLAN, REGULATING THE USE OF LAND, BUILDINGS, AND OTHER STRUCTURES FOR BUSINESS, INDUSTRY, RESIDENCE AND OTHER PURPOSES; PROTECTING THE VIABILITY OF THE COUNTY'S AGRICULTURAL INDUSTRY; AND PROVIDING FOR AMENDING THE REGULATIONS.

WHEREAS, Title 76, Chapter 2, Part 2, MCA, empowers the County to enact land use regulations and to provide for their administration, enforcement and amendment, and

WHEREAS, the County Commissioners deem it necessary for the purpose of promoting the health, safety and general welfare of the county to enact development regulations, and

WHEREAS, the County Commissioners, pursuant to the provisions of Section 76-2-205, MCA, have required their Planning Board to recommend appropriate regulations, and

WHEREAS, the Planning Board has recommended development regulations, and

WHEREAS, the County Commissioners, pursuant to the provisions of Title 76, Chapter 1, Part 6, MCA, have adopted a comprehensive plan for the county, and the regulations have been prepared in accordance with the plan, and

WHEREAS, all requirements of Title 76, Chapter 2, Part 2, MCA, with regard to the preparation of development permit regulations have been met;

NOW THEREFORE BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF \_\_\_\_\_ COUNTY, MONTANA, TO ADOPT DEVELOPMENT PERMIT REGULATIONS, AS FOLLOWS:



## MODEL COUNTY DEVELOPMENT PERMIT REGULATIONS

### SECTION 1. TITLE.

These regulations shall be known and may be cited as  
"The Development Permit Regulations for \_\_\_\_\_ County, Montana."

### SECTION 2. AUTHORITY.

These Development Regulations are adopted pursuant to Sections 76-2-201 through 76-2-228, MCA, The County Zoning Enabling Act; and Sections 76-1-101 through 76-6-606, MCA, Local Planning Enabling Act. [Where a planning and zoning district is formed, the authority is 76-2-101 through 76-2-112, MCA.]

### SECTION 3. PURPOSE.

A. The purpose of these development permit regulations is to promulgate and adopt such regulations that:

1. Are designed in accordance with the comprehensive plan.
2. Are designed to lessen congestion in the streets.
3. Will secure safety from fire, panic, and other dangers.
4. Will promote health and the general welfare.
5. Will provide adequate light and air.
6. Will prevent the overcrowding of land.
7. Will avoid undue concentration of population.
8. Will facilitate the adequate provision of transportation, schools, parks, and such other public requirements.
9. Give reasonable consideration to the character of the district (area).
10. Give reasonable consideration to the district's (area's) peculiar suitability for particular uses.
11. Give reasonable consideration to conserving the value of buildings.
12. Will encourage the most appropriate use of land throughout the jurisdictional area.

B. The purpose of these regulations is also to implement the land use goals and objectives set forth in the adopted \_\_\_\_\_ County Comprehensive Plan:

1. Protect existing agricultural operations from nuisance suits, disruption of irrigation systems and livestock operations, and nuisances from pets and noxious weeds.
2. Assure that new development is designed to minimize the public costs of providing services.
3. Assure that any development in the county is of high quality which minimizes or eliminates public health or safety hazards in the county.

4. Encourage new growth to be compatible with the county's agricultural and rural character.
  5. Protect the rivers and streams in the county.
  6. Encourage new growth to locate near existing communities and services.
  7. Protect the county's agricultural economic base by discouraging development on the productive agricultural lands.
  8. Discourage development of residential and vacation subdivisions in certain designated areas of the county.
- 

The Montana Supreme Court ruled in *Lowe v. City of Missoula*, 165 Mont. 38, 525 P.2d 551 (1974), that when cities and towns propose zoning or rezoning, they must consider the 12 points set forth in 76-2-304, MCA - the purpose section of the Municipal Zoning Enabling Act - and that a zoning regulation or rezoning is invalid unless it is enacted in accordance with the 12 criteria. Because 76-2-203, MCA, of the County Zoning Enabling Act, contains the same language, the *Lowe* ruling also applies to counties by inference.

To meet the 12-point "Lowe" test, a county should, as a minimum list the 12 points in the purpose section of their local land use regulations. To give greater legal support to the regulations, local officials should try to ensure that the 12 points are addressed in the staff report and that the minutes of planning board or governing body meetings show that the 12 points were considered and how the proposed regulations conform to the 12 points.

A county may wish to include other statements of purpose for its development permit regulations.

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#### SECTION 4. JURISDICTION.

The area included within the jurisdiction of these regulations shall be all of the unincorporated area of \_\_\_\_\_ County, Montana, [except that area located within the jurisdiction of the \_\_\_\_\_ City-County Planning Board].

#### SECTION 5. PERMIT REQUIRED.

##### A. Development Permit

1. A Development Permit must be obtained from the Permit Officer before any person may begin to construct, place, move, expand or structurally alter:
  - a. A non-agricultural single-family residence.

- b. A multiple-family development containing 4 or fewer dwelling units.
  - c. A commercial building with gross floor area up to 5,000 square feet.
2. A Development Permit may be issued only when the proposed building, structure, parcel or use will meet the requirements specified in Section 18, Requirements For Permit Approval, of these regulations.

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This Model incorporates two levels of permit review and approval. The first level deals with relatively small, uncomplicated uses that usually have minimal impact: single-family dwellings and small commercial or multi-family developments. These uses are permitted uses, and are approved by the Permit Officer if they meet the development standards specified in Section 18, Requirements for Permit Approval. The second level of review is used for proposed developments that usually are larger, more complex, or controversial. These developments, which often can significantly impact the community or environment, are given a more detailed review to help ensure that the uses are planned and designed to be compatible with the community and protect the public health, safety and welfare. These uses, defined by Subsection 5, B, 1, as conditional uses, are not permitted outright, but may be approved by the Permit Board if the proposed development (1) meets the requirements set out in Section 18, and (2) meets any additional conditions specified by the Permit Board relating to the considerations outlined in Subsection 11, B, 2.

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#### B. Conditional Use Permit

1. A Conditional Use Permit must be obtained from the Permit Board before any person may begin to construct, place, move, expand or structurally alter:
- a. A multiple-family development of 5 or more dwelling units.
  - b. A manufactured home park (see definition in Section 7, Definitions).
  - c. A commercial building with a gross floor area greater than 5,000 square feet.
  - d. All industrial uses and structures.
2. A Conditional Use Permit may be issued only when the proposed building, structure, parcel or use will meet the requirements specified in Section 18, Requirements For Permit Approval, and the conditions specified in Section 11, Conditional Use Permits, of these regulations.

### C. Exceptions

No permit is required for:

1. An agricultural residence, as defined in Section 7, Definitions.
2. Any activity related to the use, development or recovery of an agricultural, mineral or forestry resource.

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It is useful to state at the beginning of the land use regulations the requirement for a development or conditional use permit. All other provisions of the regulations follow from that requirement.

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## SECTION 6. AGRICULTURE, MINING, FORESTRY PRODUCTION NOT AFFECTED.

Nothing in these regulations shall be construed to prevent the use, development or recovery of any agricultural, mineral or forest resource (76-2-209, MCA).

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Under this statutory exemption, local government may not impose regulations or restrictions on farming, ranching, mining, or logging operations. But this exemption does not apply to the processing of agricultural, mineral or timber products. For example, local government may adopt reasonable regulations for sawmills, grain elevators, meat packing plants, and smelters.

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## SECTION 7. DEFINITIONS

Terms used in these regulations shall have the following meanings:

AGRICULTURE: Any use of land for the production of crops or livestock, including ranching, farming, dairying, grazing, pasturage, husbandry of poultry, horticulture and floriculture; "agriculture" includes:

- 1) any buildings, structures, machinery, equipment and practices associated with such production;
- 2) those accessory facilities and activities necessary to load, transport, store or dispose of agriculture products produced solely by the owner or operator on the premises;
- 3) any agricultural residence as defined in these regulations; or
- 4) any land classified as agricultural by the \_\_\_\_\_ County Assessor at the time of application.



"Agriculture" does not include commercial agricultural uses as defined in these regulations.

**AGRICULTURAL RESIDENCE:** A residence located on a tract of agricultural land which contains more than 160 acres or a quarter section, provided the residence is occupied by the owner, operator or employee(s) of the agricultural operation.

**COMMERCIAL AGRICULTURE:** Any premises, facility, or use of land for the processing, storage, disposal, loading or transporting of (1) agricultural products produced off the premises or by other than the owner of facility, or (2) commercial products for use by agricultural operators. "Commercial agriculture" includes facilities such as grain elevators, railroad loading facilities, crop and meat processing plants, rendering plants, slaughterhouses, fertilizer plants, alfalfa dehydration plants and commercial feedlots as defined in these regulations.

**COMMERCIAL FEEDLOT:** Any premise on which at least 100 head of cattle or the equivalent number of animal units of other livestock animals are confined for the purpose of feeding or fattening for market, and where 25 percent or more of the animals are not produced by the owner or the facility. "Commercial feedlot" does not include the normal seasonal feeding or wintering of livestock produced by the owner.

**COMMERCIAL USE:** Any use of land for the sale, offering for sale, purchase, or any other transaction involving the handling or disposition of any article, commodity, substance, or service; also the occupancy or management of office buildings, and the use of structures or premises by professions and trades or persons rendering services.

**CONDITIONAL USE PERMIT:** A permit granted by the Permit Board as authorizing a specific change in land use in accordance with the provisions of Section 11, Conditional Use Permits, and Section 5, B, of these regulations.

**COVENANT:** An agreement, in writing, of two or more parties by which any of the parties pledges himself to the others that something is done or will be done.

**DEVELOPMENT:** Any action which is required to receive approval and a Development Permit from \_\_\_\_\_ County under Section 5, A, and Section 10 of these regulations.

**DEVELOPMENT PERMIT:** A document issued by \_\_\_\_\_ County, authorizing a specific change in land use, as required under Section VI. of these regulations.

**DWELLING UNIT:** A building or portion of a building providing separate cooking, eating, sleeping and living facilities for one family.

**INDUSTRIAL USE:** Any use of land for the manufacture, fabrication, processing, reduction, or destruction of any article, substance, commodity, or any other treatment in such a manner as to change the form, character or appearance thereof, including



warehouses, wholesale storage, storage elevators, truck storage yards, and gasohol or ethanol plants.

**MANUFACTURED HOME PARK:** A tract of land providing two or more manufactured home lots for lease or rent.

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"Manufactured home" is an official designation by the U.S. Department of Housing and Urban Development (HUD) for a housing unit constructed in a manufacturing plant and transported for placement on a lot. "Manufactured home" is the HUD term for the housing unit most people call a "mobile home." These housing units comply with a HUD Code, but do not comply with the Uniform Building Code. It is important that local officials and citizens understand that "manufactured homes" are not "modular homes," which also are fabricated in a factory, but are constructed to meet the Uniform Building Code, plumbing, mechanical and electrical construction codes that apply to site-built houses.

Some counties may simply want to use the term "mobile home" rather than "manufactured home," in their development permit regulations to minimize confusion for the general public.

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**PARCEL OF LAND:** Any contiguous quantity of land, divided or undivided, in the ownership of the same person, group of persons, corporation or claimant.

**PUBLIC FACILITY:** Any structure or facility constructed to serve the residents of a subdivision or the general public, such as parks, streets and roads, sidewalks, curbs, gutters or drainage swales, street lighting, utilities, and systems for water supply and sewage disposal.

**RESIDENTIAL USE:** The use of land for the location of a structure to be used as the private dwelling place or sleeping place of one or more persons.

**SET BACK:** The horizontal distance required between any structure and a specified object, boundary, lot line or right-of-way line.

**STRUCTURAL ALTERATION:** The modification of a building that changes its exterior dimensions or its roof line(s).

**STRUCTURE:** Any object constructed or placed at a fixed location on the ground. Structures include buildings, mobile homes, walls, fences, and signs.

**VARIANCE:** The approved relaxation of the strict application of the terms of these regulations, where owing to special conditions a literal enforcement of the provisions of

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these regulations will result in an unnecessary hardship, where it will not be contrary to the public interest, and where the spirit of the ordinance will be observed and substantial justice done.

## SECTION 8. DESIGNATION OF PERMIT OFFICER; DUTIES

### A. Designation of Permit Officer

The County Commissioners shall designate a Permit Officer to administer and enforce these regulations. The County Commissioners may direct county personnel or departments to provide assistance as appropriate.

### B. Duties of the Permit Officer

1. The Permit Officer shall receive applications for development permits, conditional use permits and variance requests; review applications and plans; issue development permits; and conduct inspection of premises and properties.
2. Where the Permit Officer finds that any of the provisions of these regulations are being violated, he shall notify in writing the person responsible for such violations, indicating the nature of the violation and ordering the action necessary to correct it. He shall order discontinuance of illegal uses, buildings or structures or of illegal additions, alterations, or structural changes; or shall take any other action authorized by these regulations to ensure compliance with or to prevent violation of its provisions.
3. The Permit Officer shall serve as an advisor to the Permit Board, Board of Adjustment and County Commissioners on matters relating to these regulations; prepare staff reports as required; and prepare and maintain records of all proceedings required or authorized under these regulations.

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On-site inspections are important for effective administration of development permit regulations. The Permit Officer should inspect the property in question after receiving an application for a development permit, conditional use permit, or action by the Board of Adjustment. Only by inspecting the property can the Permit Officer make sound permitting decisions or offer useful explanations and recommendations to the Permit Board or Board of Adjustment. After a permit has been granted and the property is being developed, the Permit Officer should again inspect the site to determine whether the development is occurring in compliance with the permit.

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In this Model, a Permit Board is delegated authority to review and act on conditional use permits. As one alternative, the Permit Board could be delegated authority to issue development permits, which is handled by the Permit Officer in this Model. Another option could have the County Commissioners act on conditional use permits, which would eliminate the need for a Permit Board.

When a Permit Board is formed to act on conditional use permits, appointing some or all of the members of the planning board to serve on the Permit Board can provide continuity between the planning and regulation phases. **It is important to understand that when planning board members act as members of a permitting board, they do so by authority delegated under the zoning enabling act and not as members of the planning board, which is advisory only under Montana's Local Planning Enabling Act.**

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## SECTION 9. DESIGNATION OF PERMIT BOARD; DUTIES

The County Commissioners shall establish a Permit Board and appoint members to the Board. The Permit Board shall review and act on applications for conditional use permits under the procedures set forth in Section 11, Conditional Use Permits.

## SECTION 10. PROCEDURES FOR APPLICATION, REVIEW, GRANTING A DEVELOPMENT PERMIT

### A. Procedures for Applying for a Development Permit

1. A Development Permit must be obtained from the Permit Officer before any building, other structure, or land listed as a permitted use in Section 5, Permit Required, may be used or occupied, or before any building or other structure permitted under these regulations may be erected, placed, moved, expanded, or structurally altered. The Permit Officer may issue a Development Permit only when the proposed building, structure, parcel or use will meet the requirements of these regulations.
2. Before commencing a use, or constructing, erecting, expanding, altering or modifying a building or structure permitted under Section 5, Permit Required, a person must submit a completed application form to the Permit Officer with all of the required information, including plans drawn to scale, showing the actual dimensions and shape of the lot, the exact sizes and location of existing and proposed buildings and other structures. The application shall include any additional information required by the Permit Officer, including a description of the uses of buildings and land; the number of families, dwelling units, or rental units

proposed; conditions existing on the lot; and such other matters as may be necessary to determine conformance with these regulations.

#### B. Reviewing and Issuing a Development Permit

1. The Permit Officer shall review the application to ensure the required information is submitted and is complete. When the application and submitted information are complete, the Permit Officer shall determine whether the proposed building, structure, alteration, or use is permitted at the proposed location, and whether the proposal will comply with the provisions of these regulations.

2. Should the Permit Officer find that the proposal is a permitted use in the applicable location and will conform to all requirements, he shall issue the applicant a Development Permit.

3. Should the Permit Officer find that the proposed use or structure is either not permitted in the applicable location or will not conform to all requirements of these regulations, he shall deny the application and state in writing that the application is denied, and explain the reasons for denial. The statement accompanied by one copy of the application shall be sent to the applicant.

4. Construction, installation, alteration, placement or use must comply with the plans approved by the Permit Officer.

5. A Development Permit shall be in effect for one year from the date of approval.

### SECTION 11. CONDITIONAL USE PERMITS

#### A. Purpose

The purpose of the conditional use permitting process is to provide a more detailed and comprehensive review of certain proposed developments that potentially could significantly impact the community in order to protect the public health, safety and welfare.

#### B. Conditional Uses; Requirements

1. No structure or land may be used for any purpose where the use meets the requirements of a conditional use under Section 5, Permit Required, of these regulations, unless a conditional use permit has been granted through these procedures.
2. Conditional uses must comply with the requirements of Section 18, Requirements for Permit Approval, and any additional conditions prescribed by the Permit Board relating to the following:

- Adequate ingress and egress to property and proposed structures with particular concern for automotive and pedestrian safety and convenience, traffic flow and control, and access in case of fire or other emergency.
- Adequate off-street parking and loading areas, where required, with particular attention to access, traffic flow and vehicular and pedestrian safety.
- Location of garbage containers and garbage pickup with respect to traffic flow and access, odor, and vehicular and pedestrian safety.
- Availability and compatibility of utilities in suitable locations.
- Adequate screening and buffering, with attention to type, dimensions and character.
- Signs, with attention to preventing glare and promoting traffic safety and harmony with adjacent properties.
- Required yards and open space.
- General compatibility with adjacent and other properties.
- For housing developments with 9 or more dwelling units, a development plan that incorporates the above conditions and ensures (a) privacy for residents, (b) usable yard areas, (c) proper orientation of buildings, (d) proper drainage and (e) provision of open space.

### C. Procedures for a Conditional Use Permit

The following procedures must be followed before the Permit Board may grant a Conditional Use Permit:

1. An accurate and complete written application for a conditional use must be submitted to the Permit Board through the Permit Officer. All applications for conditional use permits must be accompanied by plans drawn to scale, showing the actual dimensions and shape of the lot to be built upon; the exact sizes and locations on the lot of any existing buildings; the location and dimensions of the proposed buildings or alterations; and information which clearly states how the conditions for the use will be met.
2. The application must include any other information as may be required by the Permit Officer, including descriptions of proposed buildings and alterations; existing or proposed uses of land and buildings; the number of families, dwelling units, or rental units the building is designed to accommodate; conditions existing on the lot;



and such other matters as may be necessary to determine conformance with, and provide for the enforcement of these regulations.

3. Notice shall be published at least 7 days in advance of a public hearing before the Permit Board. The owner of the property for which a conditional use is sought or his agent shall be notified of the hearing by mail.

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This Model provides that public notice be published seven days before the Permit Board holds a hearing on a conditional use or the Board of Adjustment holds a hearing on an appeal or variance request. Because many Montana counties have weekly newspapers that are published in mid-week, the required seven-day notice period actually becomes approximately 10-12 days. Although seven or more days is ample to notify the public of a scheduled hearing, some county officials may feel that a longer public notice period is desirable.

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4. At the public hearing any party may appear in person, or through an agent or attorney.
5. Before granting any conditional use permit, the Permit Board shall make a written finding that the proposed use will comply with the conditions governing the use and the other requirements of these regulations, and that the conditional use will not adversely affect the other uses within the area.

## SECTION 12. BOARD OF ADJUSTMENT

### A. Board of Adjustment Established

A Board of Adjustment (herein after referred to as "the Board") is hereby established in accordance with Sections 76-2-221 through 76-2-228, MCA. The County Commissioners shall appoint 5 members to the Board, each for a term of 2 years except that in the initial appointment, 2 members shall be appointed for a term of one year, and 3 members for a term of 2 years. Members of the Board may be removed from office by the County Commissioners for cause upon written charges and after public hearing. Vacancies on the Board shall be filled by resolution of the County Commissioners for the unexpired term of the member affected.

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The Montana Supreme Court has indicated that an appeals process is a necessary component of a valid land use regulation. The Court also indicated that an appeals process is necessary to prevent the injustices that might otherwise result with the strict enforcement of the zoning ordinance on a particular property with peculiar circumstances. The County Zoning Enabling Act requires formation of a board of adjustment to serve this appellate function.

From both a theoretical and practical perspective, the board of adjustment should comprise members who do not sit on the zoning commission or planning board. The board of adjustment is a quasi-judicial body that acts on appeals of administrative decisions and on variances from the requirements. This "judicial" function is best performed by independent individuals who did not help draft the regulations. In small communities, however, it is often difficult to find people to serve on the various boards and commissions. Appointing one or two persons from the planning board or permit board would help maintain continuity of rationale for the regulations and need not undermine impartial judgement.

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#### B. Powers of the Board of Adjustment

The Board shall have the following powers:

1. To hear and decide appeals where it is alleged that there is an error in any order, requirement, decision, or determination made by an administrative official in the enforcement of these regulations.
2. To grant variances from the requirements of these regulations when (1) the granting will not be contrary to the public interest, (2) where owing to special conditions a literal enforcement of the provisions of these regulations will result in unnecessary hardship, and (3) where the granting of the variance will observe the spirit of the regulations and substantial justice done. "Hardship" refers to circumstances peculiar to the particular property. Financial or economic difficulties, or consequences of actions by the property owner are not "hardships" for zoning purposes.
3. The Board may, approve, conditionally approve, or deny any request for a variance from the requirements of these regulations. The Board must act on requests for variances in accordance with Subsection E, Requirements Governing Granting of A Variance, below.



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The County Zoning Enabling Act identifies the granting of special exceptions as a third power of the Board of Adjustment. This Model gives the Permit Board the authority to issue conditional use permits, which are similar in function to special exceptions in that a more comprehensive review is required. Each county must decide whether the Board of Adjustment or the Permit Board is the appropriate body to conduct this more comprehensive review.

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#### C. Proceedings of the Board of Adjustment

1. The Board shall select one of its members as chairman and shall adopt rules necessary to conduct its affairs in keeping with the provisions of these regulations. Meetings shall be held at the call of the chairman and at such other times as the Board may determine. The chairman, or in his absence, the acting chairman, may administer oaths and compel the attendance of witnesses. Meetings shall be open to the public.
2. The Board shall keep minutes of its proceedings, showing the vote of each member upon each question, or if a member is absent or fails to vote indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be a public record and be immediately filed in the office of the Board.

#### D. Procedures for Variance Requests

1. Applications for a variance to the Board of Adjustment may be submitted by any person as provided by the rules of the Board, by filing an Application for Variance with the Permit Officer.
2. The Application for Variance must specifically set forth the reasons for requesting the variance, as indicated on the Application form.
3. The Board shall fix a reasonable time for the hearing of the variance request, give notice of the hearing at least 7 days prior to holding a public hearing, and shall notify the applicant by mail.
4. At the hearing any party may appear in person or be represented by an agent or attorney.

#### E. Requirements for Granting a Variance

1. To grant a variance the Board must make a finding that the granting of the variance will be in harmony with the general purpose and intent of these

regulations, will not be injurious to the neighborhood, is the minimum variance that will make possible the reasonable use of the land, building or structure, and will otherwise not be detrimental to the public welfare.

2. In addition the Board must determine that:

- (a) Special conditions and circumstances exist which are peculiar to the land, structure or building involved and which are not applicable to other lands, structures or buildings in the jurisdiction.
- (b) A literal interpretation of the provisions of these regulations would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of these regulations;
- (c) The special conditions and circumstances do not result from the action of the applicant;
- (d) Granting the requested variance will not confer on the applicant any special privilege that is denied by these regulations to other lands, structures, or buildings in the jurisdiction.
- (e) The result of granting of the variance will not conflict with the comprehensive plan.

3. Neither the permitted or nonconforming use of other lands, structures or buildings in the jurisdiction, are grounds for the issuance of a variance.

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A board of adjustment's generous granting of variances, especially use variances, can seriously undermine the purpose and integrity of a zoning ordinance. Counties can minimize this problem by setting specific conditions that must be met before the board of adjustment may grant a variance. To grant a variance, the board of adjustment must find that an "unnecessary hardship" will occur with respect to a particular property because of its peculiar shape, size, topography or configuration. "Hardship" refers to circumstances peculiar to the particular property. Financial or economic difficulties, or actions by the property owner are not "unnecessary hardships" for purposes of land use regulations. Also, the board of adjustment's granting of variances should not result in de facto rezoning or amending the regulations, which is properly handled by the county commissioners through the regulation amendment process.

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#### F. Procedures for Hearing and Acting on Appeals from Actions of Permit Officer or Board

1. The Board of Adjustment shall hear and decide appeals where it is alleged that there is an error in any order, requirement, decision, or determination made by any the Permit Officer or Permit Board in the enforcement of these regulations.
2. Any person or any officer of the county government may file a notice of appeal of any decision made by an administrative person or body within 60 days of date the subject decision was made. The notice of appeal, submitted to the Permit Officer, must comply with the rules adopted by the Board of Adjustment.
3. The Permit Officer shall promptly transmit to the Board of Adjustment the notice of appeal and all papers constituting the record of the subject decision.
4. The Board of Adjustment shall fix a reasonable time for a hearing of the appeal, give public notice and notify the affected parties. At the hearing any party may appear in person or be represented by agent or attorney.
5. The Board of Adjustment, in conformity with the provisions of these regulations, may reverse, affirm, wholly or in part, or modify the order, decision or action appealed and may make such order, decision, or action as deemed necessary, and to that end shall have the powers of the administrative official whose decision is appealed.

#### G. Stay of Proceedings

An appeal stays any further proceedings of the action appealed until the Board of Adjustment has heard and decided on the appeal under 76-2-226 (3), MCA.

#### H. Appeals From Decisions of the Board of Adjustment

1. Any person or persons, jointly or severally, aggrieved by any decision of the Board of Adjustment, any taxpayer, or any officer, department or board of the county may present to the district court a petition, duly verified, setting forth that such decision is illegal, in whole or in part, specifying the grounds of the illegality. The petition shall be presented to the court within 30 days after the filing of the decision by the Board.
2. Upon submittal of a petition appealing a decision by the Board of Adjustment, the court and Board of Adjustment shall proceed in accordance with the provisions of 76-2-227 and 76-2-228, MCA.

## SECTION 13. NONCONFORMING USES AND STRUCTURES

### A. Purpose

1. Within the jurisdiction of these regulations, structures and uses of land and structures may exist which were lawful at the time these regulations were adopted or amended, but which would be prohibited or regulated under the terms of these regulations or future amendment. The intent of this Section is to permit these nonconformities to continue until they are removed, but not to encourage their survival. These regulations further intend that nonconformities shall not be enlarged, expanded or extended, nor be used as grounds for adding other structures or uses prohibited elsewhere in the jurisdiction.
2. Nonconforming uses and structures are declared by these regulations to be incompatible with permitted uses and structures. However, to avoid undue hardship, nothing in these regulations shall be deemed to require a change in the plans, construction or designated use of any building on which actual construction was lawfully begun prior to the effective date of adoption or amendment of these regulations and where actual building construction has been carried on diligently. Actual construction is hereby defined to include the placing of construction materials in permanent position and fastened in a permanent manner. Where excavation or demolition or removal of an existing building has substantially begun preparatory to rebuilding, such excavation or demolition or removal shall be deemed to be actual construction, provided that work shall be carried on diligently.

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Effectively dealing with nonconforming uses and structures requires careful consideration in drafting land use regulations. The statutes authorizing county land use regulations require that nonconforming uses of land and structures be allowed to continue. But counties are not required to encourage the survival of nonconforming uses and structures. Local officials should have a thorough grasp of the concept of non-conformities in order to deal with them effectively.

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### B. Nonconforming Uses of Land and Structures

Where, at the time of passage of these regulations, a lawful use of land or a structure exists which would not be permitted by the regulations imposed by these regulations, the use or structure may be continued where it remains otherwise lawful, provided:

1. A nonconforming use or structure may not be enlarged or increased, nor extended to occupy a greater area of land than was occupied on the effective date of adoption or amendment of these regulations.

2. Should any nonconforming use cease for any reason for a period of more than one year, any subsequent use of the land or structure shall conform to the regulations specified by these regulations for the district in which such land is located.
3. Should a nonconforming structure or nonconforming portion of structure be destroyed by any means to an extent of more than 50 percent of its replacement cost at the time of destruction, it shall not be reconstructed except in compliance with the provisions of these regulations.
4. Nothing in these regulations shall be deemed to prevent the routine repair and maintenance of a nonconforming structure.
5. Nothing in these regulations shall be deemed to prevent the strengthening or restoring to a safe condition of any nonconforming building or part thereof declared to be unsafe by any officials charged with protecting the public safety, upon order of such official.

## SECTION 14. AMENDMENTS TO THESE REGULATIONS

### A. Initiation

Proposals to amend, supplement, modify or repeal any of the provisions of these regulations may be initiated by the County Commissioners, the Planning Board or by petition of any interested resident or property owner. The petition shall be submitted to the County Commissioners through the Planning Board, which shall review the petition, consider its merits and make a recommendation to the County Commissioners.

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Development permit regulations can be drafted to impose separate requirements that would apply in different areas or districts. In these cases, a map very likely would be needed to delineate the boundaries of areas within which certain regulations apply. The procedures for amending the development permit regulations would need to include provisions for revising the map.

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### B. Planning Board Recommendation

The Planning Board shall make written recommendations to the County Commissioners regarding proposed amendments to these Regulations.



### C. Procedures by County Commissioners

1. The County Commissioners shall hold public hearings on proposed amendments or repeals referred by petition or other initiation at which parties in interest and citizens shall have an opportunity to be heard. Notice of the hearing shall be published in the local newspaper once a week for 2 weeks prior to the hearing. The notice shall state:
  - a. the boundaries of the jurisdiction affected by the proposed amendments;
  - b. the general character of the proposed amendments;
  - c. the time and place of the public hearing; and
  - d. that the proposed amendments are on file for public inspection at the office of the County Clerk and Recorder.
2. After the hearing the County Commissioners shall review the recommendations of the Planning Board and make revisions as they deem appropriate.
3. The County Commissioners may pass a resolution of intention to amend the development permit regulations.
4. The County Commissioners shall publish notice of passage of the resolution of intention once a week for 2 weeks. The notice shall state:
  - a. the boundaries of the jurisdiction affected by the proposed amendments;
  - b. the general character of the proposed amendments;
  - c. that the proposed amendments are on file for public inspection at the office of the County Clerk and Recorder; and
  - d. that for 30 days after the first publication of notice, the County Commissioners will receive written protests to the proposed amendments from persons owning real property within the jurisdiction of these Regulations whose names appear on the last completed assessment roll of the county.
5. Within 30 days after the expiration of the protest period, the County Commissioners may adopt the resolution amending these Regulations; but if 40% of the persons owning real property within the jurisdiction shall have protested the amendments, the County Commissioners shall not adopt the amendments.

### SECTION 15. REVIEW FEES

- A. The County Commissioners shall establish by resolution a schedule of fees and charges and a collection procedure for development permits, conditional use permits, variances and appeals.
- B. Until all applicable fees and charges have been paid in full, no action may be taken on any application or appeal.

## SECTION 16. ENFORCEMENT; VIOLATIONS; PENALTIES

### A. Enforcement

1. Whenever a violation of these regulations occurs or is alleged to have occurred, the Permit Officer or any person may file a written complaint. The complaint, stating fully the causes and basis of the violation, shall be filed with the Permit Officer. He shall properly record the complaint and immediately investigate and take action as provided by these regulations.
2. The Permit Officer shall notify in writing the owner of the property alleged to be in violation in person, by first class mail or posting notice on the site. The notice shall describe the violation, cite the sections of these regulations being violated, and order the owner to attain compliance within 30 days.
3. Any person who has been notified of a violation of these regulations may
  - a. Request an inspection by the Permit Officer to show that the property has been brought in compliance within the allowed 30-day period;
  - b. File a written request for an extension of time to attain compliance; or
  - c. File an appeal to the Board of Adjustment in accordance with the provisions of Section 12, F, of these regulations.
4. Where a person fails to attain compliance within the specified time period, or to show on appeal that a violation did not occur, the Permit Officer shall request that the county attorney commence legal action, as authorized under 76-2-210 or 76-2-211, MCA.

### B. Violations

1. Violation of the provisions of these regulations or failure to comply with any of its requirements, including violations of conditions and safeguards established in connection with the grant of variances or conditional uses or any of the requirements for conditions imposed by the County Commissioners shall constitute a misdemeanor.

### C. Penalties

1. Any person who violates these regulations or fails to comply with any of its requirements shall upon conviction thereof be fined not more than \$500 or imprisoned not more than six months, or both, and in addition shall pay all costs and expenses involved in the case. Each day such violation continues shall be considered a separate offense and be punishable as such (76-2-211, MCA).



2. The owner or tenant of any building, structure, premises or part thereof, and any architect, builder, contractor, agent or other person who commits, participates in, assists, or maintains such violation may be found guilty of a separate offense and suffer the penalties specified above.
3. Nothing set forth in this section shall prevent the County from taking other lawful action as is necessary to prevent or remedy any violation.

## SECTION 17. SEPARABILITY CLAUSE

If any section or provision of these regulations is declared unconstitutional or invalid by a court of competent jurisdiction, the decision shall not affect the validity of the Ordinance as a whole, or any part thereof other than the part declared to be unconstitutional or invalid.

## SECTION 18. REQUIREMENTS FOR PERMIT APPROVAL

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It is vital that the county's adopted comprehensive plan express policies, objectives and general guidance that supports the development regulations. The statements below in capital letters are included in this section to illustrate policy statements that provide a planning framework from which conforming land use regulations can be drafted. It becomes especially important for the comprehensive plan to provide strong policy guidance when a county wants to enact land use regulations that help achieve such objectives as preserving its rural and agriculture character, or protecting river corridors.

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A Development Permit will be issued only when the applicant demonstrates that the proposed development will comply with the following standards.

### A. DEVELOPMENTS MAY NOT INTERFERE WITH AGRICULTURAL OPERATIONS.

1. Developments may not impede or diminish the quantity of, add sediments or other contaminants to, or otherwise adversely affect ground or surface water sources used for livestock watering or irrigation.
2. Developments may not obstruct or impair canals, ditches or other irrigation waterways; diminish irrigation flows; or interfere with the operation or function of headgates, culverts or other irrigation facilities.
3. The developer shall establish deed restrictions, running with the land and enforceable by \_\_\_\_\_ County, which shall commit present and future land owners to:
  - a. construct and maintain fences capable of keeping out livestock;
  - b. waive the right to file nuisance suits against persons conducting agricultural operations within the vicinity of the development;
  - c. confine all dogs to the owner's premises, on a leash or in vehicles;
  - d. prevent the spread or dispersion of noxious weeds, litter or hazardous materials onto adjacent properties.

### B. DEVELOPMENTS MUST BE ON SUITABLE LANDS

Unless special measures approved by the Permit Officer or Permit Board, as appropriate under Section 5 of these regulations, are taken to overcome the associated problems, developments are prohibited:

1. On slopes greater than 30%.

2. Where on-site individual septic sewage disposal systems are proposed and the water table rises to within 6 feet of the ground surface.
3. In locations that the County Commissioners deem to be flood-prone areas. Development within any 100-year floodplain officially designated by the Department of Natural Resources must comply with the county floodplain management regulations.

#### C. DEVELOPMENTS MAY NOT ADVERSELY AFFECT PUBLIC HEALTH OR SAFETY

1. Approaches onto public roads shall be at least 125 feet apart, have grades of less than 6 percent, and have at least the following widths:
  - residential – 24 feet
  - commercial – 32 feet
  - industrial – 40 feet

All plans for approaches onto County roads shall be reviewed and approved by the County road supervisor prior to construction.

2. Structures, wells and septic tanks must be set back at least:
  - 100 feet from streams, lakes, and identified 100-year floodways
  - 50 feet from federal and state highway rights-of-way
  - 80 feet from the centerline of county roads
  - 10 feet from any lot line
3. Siltation of surface waters shall be prevented.
4. Plantings, buildings and other structures may not be located within 125 feet of the center of road intersections, or in a manner which will obstruct line of sight within 125 feet of the intersection.
5. Where a proposed commercial, commercial agricultural or industrial development would abut a residential use:
  - a. a sight-obscuring screen or fence at least 6 feet high is required to screen the residential use;
  - b. Lighting must be directed or shielded to avoid casting direct light on adjacent properties.
6. Commercial, commercial agricultural and industrial uses must provide loading ramps and loading areas to ensure safe maneuvering of trucks.
7. All new roads must meet County standards specified in the \_\_\_\_\_ County Subdivision Regulations.

8. Grading and drainage facilities shall be designed to remove storm run-off waters and prevent accumulation of standing water.
9. Applicants must demonstrate the availability of an adequate supply of potable water.
10. Off-street parking shall be provided as approved by the permitting authority, with the following as guidelines:
  - single-family residential – 2 spaces per dwelling unit
  - multi-family residential – 1 1/2 spaces per dwelling unit
  - commercial or industrial – 2 spaces per 1,000 square feet of floor area
11. No building, structure or premises shall be used as a bar, tavern, lounge, night club or any commercial establishment that serves alcoholic beverages within 600 feet, and on the same street, of any building used exclusively as a school, church, synagogue or other place of worship. The distance shall be measured in a straight line from the center of the nearest entrance of the place of worship or school to the nearest entrance of the proposed establishment. This distance restriction does not apply to establishments where sale of table wine and beer is solely in the original package for off-premise consumption.

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Section 16-3-306, MCA, prohibits the issuance of a state liquor, beer or wine license to establishments serving alcohol located within 600 feet and on the same street of schools, churches, synagogues or other places of worship. Including this provision in county development regulations promotes consistency between local land use regulation and state liquor control laws. County officials should review all the provisions of 16-3-306, MCA, when drafting or revising their zoning ordinance.

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#### D. NEW DEVELOPMENT MUST BE DESIGNED TO MINIMIZE THE PUBLIC COSTS OF PROVIDING SERVICES.

1. All roads providing access to lots or to subdivisions from improved county roads shall provide, legal, all-weather access, and be constructed in accordance with County road standards or those specified in the \_\_\_\_\_ County Subdivision Regulations. The developer or property owners shall be responsible for maintenance of access roads.
2. Approaches onto improved County roads shall be reviewed and approved by the County Road Supervisor prior to construction.
3. Easements or other legal rights-of-way shall be provided for utilities: electric power, telephone and natural gas where appropriate.

4. All public improvements or facilities and utilities associated with the development must be designed and constructed by qualified personnel, as determined by the Permit Officer.

5. Driveways and lots shall be designed to allow ready access by emergency vehicles.

E. ENCOURAGE NEW GROWTH TO BE COMPATIBLE WITH THE COUNTY'S AGRICULTURAL AND RURAL CHARACTER.

1. Developments shall be designed to avoid blocking or altering natural drainages.

2. Developments shall be designed and constructed to minimize cutting and filling of slopes.

3. Developments shall be designed and constructed to minimize the disturbance of trees and other natural vegetation, soils, stream banks and lake shores; disturbed soils shall be revegetated within the earliest growing season.

4. Telephone and power transmission lines shall be located with respect to natural terrain and vegetation to minimize visual impact, and to minimize disturbance of soil and vegetation.

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The development requirements in this Model are quite basic and would be especially suitable for a rural county. Counties that are experiencing growth and development may want to include additional requirements and standards to effectively deal with more intensive development pressures. For example, standards can be incorporated in county regulations that address lot size and shape, maximum building height, satellite dishes or antennas, and signs. In some cases, county commissioners may want one set of requirements for the rural areas of the county and another set of requirements to guide development in an unincorporated community.

Local officials may want to consider additional standards for industrial and commercial uses, particularly in situations where these uses would be located close to residential uses. Appropriate requirements might include limits on emissions of noise, dust, smoke, odors or light. Also, buffers such as minimum distance, berms, fences, screens or plantings can be required between residential uses and industrial or commercial uses. Again, it is essential that a county adopt a comprehensive plan that supports the development permit regulations.

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